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UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re:	]	Case No. 98-53331-ASW
	]	
Charles Pitt,	]	Chapter 13
	]	
Debtor	]	
	]	
In re:	]	Case No. 98-53879-ASW
	]	
Edward C. & Pamela R. De Jesus,	]	Chapter 13
	]	
Debtors	]	
	]	
In re:	]	Case No. 98-53883-ASW
	]	
Gary Michael Carucci,	]	Chapter 13
	]	
Debtor	]	
	]	

MEMORANDUM DECISION  
CONCERNING POST-PETITION INTEREST  
ON NON-DISCHARGEABLE SUPPORT CLAIMS

The County of Santa Clara ("Creditor") objected to confirmation of the Chapter 13<sup>1</sup> plan filed by the Debtor in each of the above-numbered cases (collectively, "Debtors"). The plan in each case has been confirmed without prejudice to determination of

<sup>1</sup> Except as otherwise noted, all statutory references are to Title 11, United States Code (11 U.S.C., the Bankruptcy Code), as amended in October 1994.

1 the issue raised by the objection of Creditor, which is: when a  
2 non-dischargeable support debt is paid through a Chapter 13 plan in  
3 the amount that existed on the date of the bankruptcy petition,  
4 does post-petition interest on such debt constitute a non-  
5 dischargeable debt that remains to be paid after completion of the  
6 Chapter 13 plan?

7 The facts relevant to the subject issue are not in dispute and  
8 the matters have been briefed and argued. Debtors were represented  
9 by Edward A. Kunnes, Esq. of Boone, Miller, Prukop & Wolny.  
10 Creditor was represented by Deputy District Attorney Victor Chen,  
11 Esq. and Assistant District Attorney Philip L. Strauss, Esq. of the  
12 Family Support Division of the Santa Clara County District  
13 Attorney's office.

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15 I.

16 BACKGROUND

17 Charles Pitt filed a Chapter 13 petition on April 27, 1998,  
18 which commenced Case No. 98-53331-ASW. Creditor asserts a claim  
19 for pre-petition child support arrears of \$7,792.86.

20 Edward and Pamela De Jesus filed a Chapter 13 petition on May  
21 14, 1998, which commenced Case No. 98-53879-ASW. Creditor asserts  
22 a claim for pre-petition child support arrears of \$17,052.33.

23 Gary Michael Carucci filed a Chapter 13 petition on May 14,  
24 1998, which commenced Case No. 98-53883-ASW. Creditor asserts a  
25 claim for pre-petition child support arrears of \$93,624.85.

26 In each case, it is unclear whether the parties dispute the  
27 extent to which each claim is non-dischargeable and the extent to  
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1 which each claim is entitled to priority status. However, the  
2 issue currently before this Court concerns only the non-  
3 dischargeable portion (if any) of each claim and, as discussed  
4 below, priority status is irrelevant to that issue.

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6 II.

7 PARTIES' POSITIONS

8 Debtors propose to pay through their respective Chapter 13  
9 plans their respective non-dischargeable support obligations in the  
10 amounts that were outstanding when their respective Chapter 13  
11 cases were commenced. Creditor concedes that some of the pre-  
12 petition support debt in each case may not be entitled to priority  
13 under §507(a)(7), but Debtors are nevertheless treating all non-  
14 dischargeable pre-petition support debt as if it were entitled to  
15 priority status, and there has been no objection to such treatment  
16 by the Chapter 13 trustee or by any creditor.

17 Debtors cite §1322(a)(2), which provides that a Chapter 13  
18 plan must:

19 provide for the full payment, in deferred cash  
20 payments, of all claims entitled to priority  
21 under section 507 of this title, unless the  
holder of a particular claim agrees to a  
different treatment of such claim ....

22 Debtors point out that this section does not define "full payment"  
23 to include payment of interest. They also note that the language  
24 of this section differs from that of §1129(a)(9)(B)(i) and  
25 §1129(a)(9)(C) concerning priority claims in Chapter 11 cases,  
26 which refer to "deferred cash payments of a value, as of the  
27 effective date of the plan, equal to the allowed amount of such  
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1 claim" -- Chapter 11 permits priority claims to be paid over time  
2 (as does Chapter 13) but requires that the amount ultimately paid  
3 reflect the claims' present value (as Chapter 13 does not), which  
4 necessarily means that some amount in addition to principal (i.e.,  
5 interest) must be paid in order to compensate the creditor for  
6 delay in payment and make the future payment equivalent to a  
7 current payment. Debtors argue that, if Congress had intended for  
8 "full payment" under §1322(a)(2) to include payment of post-  
9 petition interest, it either would have expressly said so, or would  
10 have referred to present value as it did in §1129. Accordingly,  
11 Debtors contend, if they treat their non-dischargeable pre-petition  
12 support debts as priority debts, §1322(a)(2) only requires "full  
13 payment" of such debts to the extent that they existed pre-petition  
14 and does not call for the payment of any post-petition interest.  
15 Debtors argue that, since §1322(a)(2) does not require payment of  
16 post-petition interest on priority debts, full payment of the pre-  
17 petition amount of their support debts is all that is required to  
18 comply with §1322(a)(2) and such compliance operates to discharge  
19 them of any obligation to pay post-petition interest on such debts,  
20 citing cases from other jurisdictions.

21       Creditor argues that there is a difference between what is  
22 required to confirm a Chapter 13 plan and what is required to  
23 discharge a debt. Creditor notes that §1322(a)(2) is one of  
24 several criteria for confirmation of a plan, but contends that it  
25 does not affect the dischargeability of debts that are the basis of  
26 priority claims. Rather, dischargeability is governed by §1328,  
27 which excepts support debts from discharge and makes no reference  
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1 to whether a plan purports to pay such debts in full. Obviously,  
2 if a support debt has been paid in full by the time a Chapter 13  
3 plan has been completed (including all accrued interest), no part  
4 of the debt will remain unpaid to be excepted from discharge, so  
5 the issue would be moot under such circumstances. In this case,  
6 however, Debtors do not propose to pay post-petition interest  
7 during the terms of their respective plans, so such interest will  
8 be outstanding when the plans are completed -- Creditor's position  
9 is that such accrued and unpaid interest will remain owing after  
10 completion of the plans and will not be discharged under §1328.  
11 Creditor cites Bruning v. United States, 376 U.S. 358, 84 S.Ct. 906  
12 (1964) ("Bruning") and In re Pardee, 218 B.R. 916 (9th Cir. BAP  
13 1998) ("Pardee").

14  
15 III.

16 ANALYSIS

17 In Pardee, the concurring opinion of Bankruptcy Judge Klein  
18 analyzes interest-bearing debts under Chapter 13 by dividing them  
19 into three categories.

20 The first category is priority debts that can be discharged in  
21 Chapter 13 but not in Chapter 7 (i.e., debts for certain taxes).  
22 As priority debts, these must be paid in full through a Chapter 13  
23 plan under §1322(a)(2). Although such debts bear interest under  
24 non-bankruptcy law, §1322(a)(2) does not require that such interest  
25 be paid through the plan, since the section does not refer to  
26 interest and does not call for payment of present value -- in fact,  
27 Bruning and §502 provide that a claim for post-petition interest on  
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1 unsecured debt is not allowable against a bankruptcy estate, so an  
2 objection to a priority tax claim that included post-petition  
3 interest must be sustained as to interest. Under Chapter 7,  
4 priority tax debts are non-dischargeable and they therefore remain  
5 payable by the bankruptcy debtor post-discharge to any extent that  
6 they have not been paid by the Chapter 7 estate -- since post-  
7 petition interest on priority tax debts does not constitute an  
8 allowable claim, it cannot be paid by a Chapter 7 estate and  
9 Bruning holds that such unpaid interest remains owing by the  
10 bankruptcy debtor post-discharge. The situation is different in  
11 Chapter 13, however, because §1328 provides that priority tax debts  
12 are dischargeable -- thus, although post-petition interest on  
13 priority tax debts does accrue, if it is not paid through the plan  
14 (as it need not be under §1322(a)(2), §502, and Bruning), the  
15 bankruptcy debtor is discharged of liability for unpaid post-  
16 petition interest.

17 The second category is priority debts that cannot be  
18 discharged in Chapter 13 (i.e., debts for support). Just as with  
19 priority tax debts, these priority debts must be paid in full  
20 through a Chapter 13 plan under §1322(a)(2).<sup>2</sup> Just as with  
21 priority tax debts, support debts bear interest under non-  
22 bankruptcy law but §1322(a)(2) does not require that such interest  
23 be paid through the plan and a claim for post-petition interest on  
24 unsecured debt is not allowable against a bankruptcy estate under  
25 §502 and Bruning. Unlike priority tax debts, however, support

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27 <sup>2</sup> As discussed above, portions of the support debts in these cases may  
28 not be entitled to priority status, but the Debtors are treating the debts  
in their respective cases as if the debts were entitled to priority.

1 debts are not dischargeable in Chapter 13 -- therefore, any part of  
2 the debt that is not paid during the term of the plan and remains  
3 outstanding post-discharge (e.g., post-petition interest) is not  
4 rendered unenforceable against the bankruptcy debtor by virtue of  
5 the Chapter 13 discharge.

6       The third category is non-priority debts that cannot be  
7 discharged in Chapter 13 (i.e., debts for student loans, certain  
8 assigned debts for support, debts for injury caused by driving  
9 while intoxicated, and debts based on criminal restitution and  
10 fines). Because these debts are not entitled to priority, they  
11 need not be paid in full under §1322(a)(2); further, post-petition  
12 interest on unsecured debts does not constitute an allowable claim  
13 against the estate under §502 and Bruning. Because such debts are  
14 non-dischargeable, any part of them that is not paid during the  
15 term of the plan and remains outstanding post-discharge (e.g.,  
16 post-petition interest and any unpaid principal) is not rendered  
17 unenforceable against the bankruptcy debtor by virtue of the  
18 Chapter 13 discharge.

19       Judge Klein's analysis is logical and persuasive. It is based  
20 upon the unassailable premise that a debt entitled by non-  
21 bankruptcy law to bear interest continues to accrue interest until  
22 such time as it is either paid or discharged in bankruptcy. If an  
23 interest-bearing debt remains partially unpaid and is never  
24 discharged in bankruptcy (e.g., statutorily non-dischargeable debts  
25 such as taxes in Chapter 7 cases and student loans in all  
26 bankruptcy cases, and any debt in a dismissed Chapter 13 case),  
27 then any outstanding part of it remains owing. In order for a  
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1 Chapter 13 debtor to be relieved of any part of a debt -- whether  
2 it be a part consisting of post-petition interest or a part  
3 consisting of something else -- it is necessary that the debt be  
4 dischargeable in the first place. Debts for taxes are discharge-  
5 able in Chapter 13, but debts for support are not -- Debtors cite  
6 no authority that does not involve dischargeable tax debts, and the  
7 rationale of such cases does not apply to the liability of post-  
8 discharge Chapter 13 debtors for unpaid parts of non-dischargeable  
9 support debts.

10           The nub of the matter is that interest at  
11 contractual rates under nonbankruptcy law  
12 continues to accrue postpetition on all  
13 unsecured debt because, even though unmatured  
14 interest is not "allowed" by virtue of §  
15 502(b)(9) and cannot be paid by a bankruptcy  
16 trustee, the statutory disallowance does not  
17 erase the nonbankruptcy obligation to pay  
18 interest. Rather, it is the bankruptcy  
19 discharge that eliminates the obligation. If  
20 the debt is not discharged (which can occur for  
21 a host of reasons ranging from denial of  
22 discharge to dismissal of case), then the  
23 obligation remains.

24 Pardee, at 927.

25           Debtors argue that it is unfair to permit bankruptcy estates  
26 to avoid paying post-petition interest while leaving bankruptcy  
27 debtors exposed to non-dischargeable debts for such liabilities  
28 that were not paid by their estates. That is a strong policy  
argument, but the United States Supreme Court decreed such a result  
in Bruning 35 years ago and Congress has yet to alter the  
situation. Further, Chapter 13 debtors are not necessarily  
powerless to solve the problem. For example, a Chapter 13 debtor  
could propose a plan calling for payment of post-petition interest  
as it accrued on a support debt and, if there were no objection and



1 the plan met the confirmation requirements of §1325 (i.e.,  
2 compliance with Chapter 13 and Title 11, good faith, feasibility,  
3 and paying unsecured creditors as much as they would receive in  
4 Chapter 7), the plan would be confirmable.<sup>3</sup> Or, a debtor's budget  
5 might provide for direct payment of post-petition interest on a  
6 pre-petition support debt being paid through the plan and, in the  
7 absence of objection, a plan meeting the confirmation requirements  
8 of §1325 would be confirmable. Or, a debtor might file a claim on  
9 behalf of a support creditor as permitted under Rule 3004 of the  
10 Federal Rules of Bankruptcy Procedure and seek post-petition  
11 interest; if neither the debtor nor any other party in interest  
12 objected, the claim would be deemed allowed as filed pursuant to  
13 §502(a). In any event, perceived unfairness of the statutory  
14 scheme is not a basis upon which this Court can refuse to apply the  
15 statute and Debtors have cited no applicable or persuasive  
16 authority in support of such a result.

#### 17 18 CONCLUSION

19 For the reasons set forth above, County's objections to  
20 confirmation of the Chapter 13 plans in each of these cases are  
21 sustained.

22 Counsel for creditor shall submit a form of order in each case  
23 so providing, after review by counsel by Debtors.

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25 <sup>3</sup> Even if there were an objection, §1322(b)(1) permits unsecured  
26 creditors to be classified separately from each other so long as there is  
27 no unfair discrimination against any class. Given the public policy  
28 favoring support creditors and the unique nature of such debts, separate  
classification might be warranted under the circumstances of a particular  
case.

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Dated: October 14, 1999

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ARTHUR S. WEISSBRODT  
United States Bankruptcy Judge